

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	CASE NO. 22-90341-11
	§	JOINTLY ADMINISTERED
	§	HOUSTON, TEXAS
CORE SCIENTIFIC, INC, ET AL,	§	WEDNESDAY,
	§	MARCH 1, 2023
DEBTORS.	§	3:47 P.M. TO 5:13 P.M.

MOTION HEARING

BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

(Recorded via CourtSpeak)

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ALSO PRESENT:

Mr. Miser

(Please also see Electronic Appearances.)

1 HOUSTON, TEXAS; WEDNESDAY, MARCH 1, 2023; 3:47 P.M.

2 THE COURT: Then good afternoon, everyone. This is
3 Judge Jones. The time is 3:47 Central. I apologize for the
4 slight delay. Today is March the 1st, 2023. And this is the
5 docket for Houston, Texas.

6 On the 3:30 docket, we have the jointly administered
7 cases under Case Number 22-90341, Core Scientific, Inc.

8 Folks, please don't forget to record your electronic
9 appearance. If this is new for you, it's a quick trip to my
10 website. Follow the link, a couple of mouse clicks. You can
11 do that at any time prior to the conclusion of the hearing.

12 The first time that you speak, if you would please
13 state your name and who you represent, that serves as a
14 benchmark for the court reporters in the event that a
15 transcript request is made.

16 If you are in the courtroom, please come to the
17 lectern. It's the only place you can both be heard and be
18 seen.

19 Finally, we are recording this afternoon using
20 CourtSpeak. We'll get the audio up on the docket shortly
21 after the conclusion of today's hearing.

22 All right. I have read everything that's been filed
23 and I have a couple of comments that I'm going to make that I
24 don't like to make, but I'm going to.

25 Anything I should know before we get started?

1 MS. BERKOVICH: We have resolved -- good afternoon,
2 Your Honor. Ronit Berkovich of Weil Gotshal for the Debtors.

3 THE COURT: Yes, ma'am.

4 MS. BERKOVICH: Just for the Record, I have with me
5 at counsel table my partners, Mr. Schrock and Mr. Tsekerides.
6 And we have my associate, Austin Crabtree. He's been a member
7 of the team from the beginning, but he just moved from
8 New York to Houston, so you'll see him in here more often.

9 THE COURT: I like the identification of your
10 associates. So you have ownership rights? Is that what that
11 it?

12 (Laughter.)

13 THE COURT: I am just having fun with you. He's
14 certainly welcome. I'm glad that he's here.

15 Has he been licensed in the Southern District yet?

16 MS. BERKOVICH: Yes.

17 THE COURT: Terrific, welcome.

18 MS. BERKOVICH: Yes. Your Honor, the update is we
19 haven't resolved anything relating to the motion to adjourn or
20 to the Equity Committee motion. However, we have resolved
21 about half of the Equity Group's objection to the DIP.

22 THE COURT: Okay.

23 MS. BERKOVICH: That's the update.

24 THE COURT: All right. So let me make a couple of
25 comments and then -- yes, ma'am, Ms. Reed?

1 MS. REED: Your Honor, Noelle Reed for the Ad Hoc
2 Committee Group.

3 THE COURT: Yes, ma'am.

4 MS. REED: I would say this: We have in some sense
5 resolved a portion of the motion to adjourn in the sense that
6 the Debtors and the Ad Hoc Equity Group did produce documents
7 to the Ad Hoc Noteholder Group, and that was a portion of
8 their objection.

9 THE COURT: All right.

10 MS. REED: We produced the exchanges regarding the
11 negotiation of the proposed Order.

12 THE COURT: All fine. Thank you.

13 All right. So let me make a couple of comments to
14 everybody. You have, at least in my view, a very fragile
15 Debtor. And I say that because everyone wants to say, you
16 know, short winter, bitcoins going into the spring time/summer
17 time, you know, I challenge anyone to show me any correlation
18 that exists between crypto and any other measure of financial
19 success in the market.

20 I have read every paper I can get my hands on and to
21 the extent that you-all have some crystal ball that says we
22 are back on a path of strength, it's going to be a hard sell
23 in this courtroom. It is difficult.

24 I can -- I asked this question in a room full of
25 financial professionals and lawyers last week, but what is

1 crypto? And nobody can answer that question when I start to
2 press them on it, and I only say that because it's the nature
3 of what exists. It doesn't mean that it's not legitimate.
4 I'm not suggesting that at all.

5 I just simply mean that everything that we might
6 look to to get comfort that we are on the right track and we
7 don't have forward curves, as we might in energy. We don't
8 have correlations to consumer confidence or any -- we don't
9 have any of those things that we can rely on in an effort to
10 try and figure out where this is headed, which is a long way
11 of saying, everybody needs to take a deep breath.

12 So let me tell everyone, making snippy comments in
13 pleadings is not persuasive to me. I know how to be snippy
14 and I know how to be snippy sitting right here. You don't
15 want to engage in that. So stop it. It's not persuasive.
16 It's not constructive. Stop it.

17 The last thing that you want me to do is to start
18 looking through your invoices, which I very much detest to
19 begin with, and trying to make assessments for what
20 constitutes a non-productive, non-attributing time entry.

21 I hope everybody understands what I just said. Stop
22 it. Focus on the Debtor.

23 Now, that all being said, with respect to the Equity
24 Committee, if we need to have a trial, I'm very aware of the
25 standards that the Circuit has said have to be met in order to

1 have an Equity Committee. And even then, I have an awful lot
2 of discretion.

3 The Debtor has made a business decision. The
4 Committee has not objected to that business decision. I want
5 everyone to know, that doesn't mean I have to accept it.

6 I appreciate that you've negotiated a fee cap. I
7 don't have to accept it.

8 My inclination is this -- and if we need -- if
9 people have questions, want to talk, want to talk amongst
10 yourselves, want to ask me questions, perfectly happy to
11 entertain that.

12 The measure of success in my mind for an Equity
13 Committee is: Do they contribute anything to the process and
14 is there something to be gained for the constituency that they
15 represent? At the same time, other classes of creditors
16 should not bear the risk of that exercise.

17 My inclination, you know, happy to hear arguments to
18 the contrary.

19 Mr. Hansen, I'm going to especially be interested in
20 your reaction to this.

21 My inclination is to accept the Debtors' decision
22 with the following caveats: I'm going to reserve for myself
23 the benefit of hindsight and if I determine that the interest
24 of equity security holders has not been advanced or if I
25 decide that it has, but at the expense of other creditors, I

1 have a number of tools available to me and I'm reserving them
2 all.

3 Number one, you have a cap. That doesn't mean I
4 have to agree to the cap. It means that it's somewhere
5 between zero and the cap. It also means I have the ability to
6 assess whatever the costs of the Committee are to the
7 recoveries of equity, and I know how to do that.

8 That is my inclination and I'm certainly happy to
9 hear questions, comments, and again, I'm particularly
10 interested, Mr. Hansen, of your reaction to this, is I want to
11 get us all focused on trying to figure out if this is a
12 business worth saving and if it is, how we go about saving the
13 business?

14 That's my focus. And I'm going to do whatever I
15 have to do to get everybody else focused on what I think is
16 important.

17 So let me first ask -- no one knew this was coming.
18 I've been thinking about it for a while now. Folks want a
19 chance to have some privacy and talk with your own team to
20 figure out how you want to respond, if at all.

21 And again, Mr. Hansen, I want to make it very clear.
22 You're going to get your day in court if you want it. I'm
23 just not sure that this isn't the better result because you
24 get the benefit to argue to me later on with the benefit of
25 time and performance.

1 Because again -- I'm going to say it for the third
2 time, then I'll be quiet -- we're all going to get refocused
3 on saving this business. We're going to stop filing pleadings
4 that are -- I'm just going to call them snippy. It just
5 doesn't do anything, but it's going to stop.

6 So with that, let me ask -- I'm happy to hear from
7 folks, I'm happy to give you a couple of minutes to just level
8 set with your team members. I'm also happy for Choice C,
9 which I can't really think of right now.

10 (Laughter.)

11 MS. BERKOVICH: Your Honor, we think it makes sense
12 to take a few minutes for everybody to consider what you've
13 just said.

14 THE COURT: All fine. Let me do this: Albert, if
15 you're in chambers, if you can make sure -- the attorney
16 lounge is available if you need privacy. That lock -- I think
17 it's still 1, 2, 3. And the room next to it is actually mine
18 and I think I unlocked it for the last hearing, but we'll make
19 sure it's unlocked, if again, if you need privacy.

20 If I need to find another room, you know, I'll get
21 somebody else's conference room if I need it.

22 That all make sense?

23 (No audible response.)

24 THE COURT: So let's do this: It's -- I'm going to
25 call that it's 4:00 o'clock. I have this -- we're not going

1 anywhere until we get all of these issues resolved today. So
2 if you've got flights, you know, please tell me. I want to be
3 accommodating.

4 But we're not leaving until we get all of these
5 issues resolved. But I'm thinking 4:15. If you need more
6 time, just send somebody back in to tell me. I'm not going
7 anywhere. I'm going to sit right here because evidently if I
8 walk away with our new security, all of my computers shut
9 down. So I'm just going to sit right here.

10 Any other questions, comments, before we break?

11 (No audible response.)

12 THE COURT: All right, terrific. Thank you.

13 I'll see you back at 4:15.

14 MS. BERKOVICH: Thank you, Your Honor.

15 (Recess taken from 3:57 p.m. to 4:30 p.m.)

16 AFTER RECESS

17 THE COURT: All right. Good afternoon again,
18 everyone. This is Judge Jones. The time is 4:30 Central. I
19 appreciate the emails that have indicated that some of the
20 folks online were having difficulty hearing me. Again, I'm
21 having to -- and I'm still learning how to do this -- to
22 bounce back and forth between people in the courtroom that I
23 haven't had for three years, as well as people on video. I
24 will endeavor to keep the microphone in front of me so that
25 everyone can hear.

1 Mr. Schrock?

2 MR. SCHROCK: Thanks very much, Your Honor. For the
3 Record, Ray Schrock, Weil Gotshal & Manges, counsel for the
4 Debtors.

5 Your Honor, we did have an opportunity -- I think
6 everybody took a break and went back and considered it. From
7 the Debtors' perspective, we think that Your Honor has a very
8 constructive solution that would avoid a lot of cost and
9 expense and the need for a trial, a potential, you know,
10 discovery fight around the scope of what's necessary.

11 Our suggestion -- and I'm going to make a suggestion
12 and I think Mr. Hansen has a few things he wants to say. I
13 think Mr. Miser for the Ad Hoc Equity Group has a few things
14 that they'd like to just get clarified.

15 But our suggestion is that the parties forego having
16 a fight on this issue today. Work, use, 24 hours, or when the
17 Court's next available, to work on language. If we could have
18 the accommodation to appear by Zoom or something tomorrow
19 afternoon to reconvene, we think that that would be, you know,
20 a good use of everyone's time and frankly a wise use of estate
21 resources, rather than moving forward on this particular topic
22 today.

23 But I don't want to speak for the other parties.
24 That's our suggestion. We think it makes a lot of sense and
25 it's the right thing to do, but we'll let the other parties

1 say their piece on it.

2 THE COURT: Of course.

3 Mr. Hansen, do you want to go first because it
4 primarily concerns you more than anybody?

5 MR. HANSEN: Yes. Thank you, Your Honor. Kris
6 Hansen with Paul Hastings on behalf of the Ad Hoc Committee of
7 Secured Convertible Noteholders.

8 First of all, Your Honor, we appreciated your
9 perspective when we arrived here. As an advisor to my
10 clients, I would say that I like your suggestion. So I was
11 out in the hall and only had an opportunity to speak with a
12 handful of the clients. We have a larger group and I do need
13 to speak with all of them --

14 THE COURT: Of course.

15 MR. HANSEN: -- to get their agreement.

16 One thought I had, which was part of our adjournment
17 motion, was really whether we all wanted to just pause on the
18 formation of the Equity Committee and the implementation of
19 this type of order until the Debtor actually has a business
20 plan because they don't have one. And then we could all come
21 back to it then.

22 I know that the Ad Hoc Equity Committee is not in
23 favor of that type of a result for many reasons, which they
24 can espouse, but from our perspective, we think that brings
25 some clarity to the situation because we share your view that

1 it's very hard to come up with independent views of valuation
2 associated with this business.

3 So -- and in the absence of you authorizing
4 adjournment until the Debtor has a business plan to deal with
5 this, we support the Debtors' perspective, which would be take
6 a day, let's all go talk to our respective clients and see if,
7 in fact, your suggestion makes sense and how we translate that
8 into the language in an Order that makes sense for everyone.

9 But I, again, just really appreciate the Court's
10 view because the hindsight look is very important here.

11 THE COURT: I agree.

12 MR. HANSEN: All right. Thank you, Your Honor.

13 THE COURT: And let me -- and I certainly want to
14 hear Ms. Reed or Mr. Miser, and just to give you some idea of
15 what I have available just so because it would seem to me that
16 that would be important.

17 I kind of anticipated that there might be something
18 along those lines, so I have a Laredo Panel tomorrow at 2:30
19 that I can't move. I mean, it's not very big. It's 150
20 cases, give or take. It'll take me an hour, maybe an hour and
21 a half. But I've cleared the rest of the day, both before and
22 after. So if that's helpful in terms of when you would have
23 access, if you needed it. You can have before and you can
24 have after.

25 And of course, procedures always allow video. You

1 don't need -- that's not an ask. You always have that option.

2 MR. HANSEN: Perfect. That was going to be the
3 question I had for Your Honor.

4 THE COURT: Certainly.

5 Ms. Reed?

6 MS. REED: Certainly, Your Honor. I think from our
7 perspective --

8 THE COURT: Can I -- just no one will be able to
9 hear you.

10 MS. REED: In order to have time to confer, we
11 suggest the afternoon.

12 THE COURT: Sure.

13 MS. REED: So the after, rather than the before.

14 THE COURT: All right. You want to just -- I mean,
15 do you want to just say 4:00 o'clock Central Time? Is that
16 enough time?

17 MS. REED: That works for us, if it works for
18 everyone else.

19 THE COURT: I can also tell you, if it's helpful --
20 because again, I want to be -- I'm happy to make the call, I
21 just am. But I really want to get focused on the business.

22 If it's helpful, just because folks are -- you know,
23 they want to get on a plane tonight and I certainly understand
24 that. You know, I can clear time Friday morning if that would
25 be more helpful?

1 I mean, you-all tell me.

2 MS. REED: Friday morning may be better. We have a
3 large group of people potentially to gather.

4 THE COURT: All right. Do you want to just say
5 9:30 Friday morning?

6 MS. REED: That's fine for the Ad Hoc Equity Group.

7 THE COURT: And --

8 MR. SCHROCK: That's fine, Judge.

9 THE COURT: All right. Thank you.

10 Mr. Hansen?

11 MR. HANSEN: Yeah, that's fine, Your Honor.

12 THE COURT: Thank you.

13 And any other questions or?

14 MS. REED: Yes.

15 THE COURT: Okay. Fire away.

16 MS. REED: We have a few clarifying questions.

17 THE COURT: Sure.

18 MS. REED: We just want to make sure as we're
19 conferring with the client base, because part of the reason we
20 need some time is -- as the Court can appreciate -- the actual
21 client doesn't exist yet and so the formation --

22 THE COURT: Go talk to your group.

23 MS. REED: Right. But we just have to see.

24 THE COURT: I got that.

25 MS. REED: So we want to make sure we understand

1 what it is that they would be consenting to here.

2 Is the Court talking about a true hindsight, not a
3 reasonableness at the time of the expenditures?

4 THE COURT: Yes.

5 MS. REED: Okay.

6 THE COURT: And I will tell you I'm probably going
7 to do that anyway because I want -- you know, this is the
8 creation of a -- and mind you, you have to somewhat trust me
9 and this is -- I'm not on a vendetta, I'm not trying to make a
10 point on this. I'm about as apolitical as it can possibly be.
11 I generally offend everybody.

12 (Laughter.)

13 THE COURT: But Mr. Hansen's point really catches me
14 and there's always a cost involved in the process. It's a
15 cost that everybody bears. It has to be a ratable sharing of
16 that cost and, mind you -- and I want to try to give you a
17 ridiculous example.

18 If you charged for a phone call because you were
19 trying to figure something out, you don't have to demonstrate
20 to me that that phone call led to a tangible benefit. I got
21 that.

22 But if you embark on a piece of litigation and I
23 conclude that it was a path taken because there was no risk to
24 the cost -- as I see a lot -- then I am going to re-evaluate
25 that hindsight using my own judgment of what was available at

1 the time and what a -- you know, what a rational, reasonable
2 lawyer who would be considering everything, including the cost
3 of taking a particular path would consider.

4 And again, I'm not suggesting this would be the
5 case, but I see folks all the time go, you know,
6 Mr. Tsekerides is paying for it. I'm just going to take my
7 spin at the wheel. I don't care because he's going to pay for
8 it at the end. That, I am going to look at with a hindsight
9 approach.

10 But again, what I want -- if your clients are in the
11 money, I get the argument and I want them to be as in the
12 money as they can possibly be. If they are not in the money,
13 think about that, too, and what should have been done, could
14 have been done, and I fully realize you don't control the
15 market. I'm not -- I'm certainly not holding you to the
16 market.

17 You know, the best success I ever had was being
18 involved in the Asarko case because we delayed everything long
19 enough that we became solvent. That is the best decision I
20 was ever involved in -- I'm joking, sort of.

21 (Laughter.)

22 THE COURT: I got all of that. I do.

23 But this is an unusual thing and I often question
24 the role. You know, this is not an opportunity to sit on the
25 sideline and simply be another party throwing bombs in an

1 effort to try and get something. I will shut that down really
2 quickly. I want it to be constructive. You know, part of
3 what I think your job is, is to provide unbiased, good
4 information to shareholders because, number one, they, as a
5 group, tend to be less sophisticated about the bankruptcy
6 process than, say, a group of commercial noteholders.

7 And so I -- you know, that's a big deal to me. I
8 want these folks to be able to ask the questions that are
9 important to them and I want them to have the ability to get
10 those answers from somebody that is perceived to be not
11 biased.

12 So, I mean, there's a whole bunch that gets wrapped
13 up in there and when you undertake to do this, that's, you
14 know, I'm trying to talk to you and give you sort of what I'm
15 expecting out of this. And again, to the extent that you're
16 at the table in plan negotiations, you know, the fact that you
17 argue for something and don't get it, that's not my viewpoint.

18 It's whether or not you were trying to hold
19 something hostage using someone else's money that I am going
20 to look at.

21 Does that make sense?

22 MS. REED: It does, and to me, that's -- it's not
23 truly a hindsight test. To me that is an assessment of
24 whether the course of action was reasonable when it was
25 undertaken and it was undertaken in good faith. It's not a

1 pure results based review. I mean, what you just described to
2 me is perfectly reasonable when motions are filed that didn't
3 need to be filed that had no chance of success, that weren't
4 reasonably aimed toward creating value for the Debtor or
5 assessing value for the Debtor or weren't part of the mandate
6 of the Committee.

7 So -- and this is just important for our client
8 obviously to understand. I've known you a long time. I have
9 a lot of faith in the Court and then the Court, you know, not
10 being vindictive toward any party in this court. And we
11 perfectly understand. I hope the Court recognizes that we
12 worked quite hard to reach agreement, to reach accord with
13 folks and that's our aim. It's not our aim to throw blocks.

14 THE COURT: I get the pull and the tug in all this.
15 I just want, again, you know, I'm not going to say it again,
16 but I haven't been happy with the tone of a lot of the
17 pleadings that have been filed lately. I want it
18 constructive. I want us to focus on how to maximize value and
19 you know, everyone says that, but I know what it means because
20 it means that people have security in their jobs. It means
21 that vendors get paid on time. It means that everyone has a
22 shot. That's what I want.

23 MS. REED: Understood, Your Honor.

24 And it was our understanding, as well, I mean, we
25 would obviously disagree with Mr. Hansen's suggestion that we

1 wait for a Plan, in part just because of the practical reality
2 of forming the Committee.

3 THE COURT: Yeah, I --

4 MS. REED: It will take --

5 THE COURT: You filed a motion. I rule on things
6 that get filed before me. I'm not waiting.

7 MS. REED: Understood, Your Honor.

8 THE COURT: You may not like the answer, but I rule
9 quickly.

10 MS. REED: Understood, Your Honor.

11 And the other piece is we understood we have an
12 agreement with the noteholders that between now and, I
13 suppose, Friday morning, we wouldn't use that time for any
14 discovery. I think we have that agreement.

15 THE COURT: Mr. Hansen?

16 MR. HANSEN: Yeah, Your Honor. That's fine from our
17 perspective. We're not going to seek additional discovery,
18 but however, if we don't -- let's advance tomorrow. Friday
19 morning if we come back and we say, yeah, our clients are not
20 interested in this deal and we want to actually have a hearing
21 on Friday morning --

22 THE COURT: Sure.

23 MR. HANSEN: -- we're going to reserve our rights to
24 talk about the discovery that we don't have and what's missing
25 from a record perspective because we think that's important.

1 THE COURT: And I hope at some point that --
2 because, mind you, I mean, I've stood where you're standing
3 before. I know what cross is going to look like. I assume
4 that what you would do is you'd say, you know, Ms. Reed, I
5 want you to have -- would you agree to have the following
6 people present, and if they go, nope, you've got to catch them
7 and subpoena them, well then, you're probably going to get
8 your continuance.

9 If she says, absolutely we'll have that person, then
10 more likely I'm going to look at you and go, you are three
11 times the lawyer I ever was and I stood before many a judges
12 without any discovery at all and conducted cross. And I go,
13 let me see your "A" game. Let me see what you've got.

14 MR. HANSEN: Understood, Your Honor.

15 And just so we're on the same page, it's more than
16 the discovery with respect to the Debtor because it's -- that
17 was an issue for us.

18 THE COURT: I only picked Ms. Reed because she's
19 standing there. I got that.

20 MR. HANSEN: Agreed. All right. Thank you, Your
21 Honor.

22 THE COURT: All right. Thank you.

23 All right.

24 MS. REED: Thank you, Your Honor.

25 I don't have anything further.

1 THE COURT: All right. Thank you.

2 So we're going to take all that to Friday morning at
3 9:30.

4 And obviously if you guys get an Agreed Order, just
5 upload it. And I will also tell you I'm perfectly happy if
6 you get down to the point where we have an Agreed Order A and
7 an Agreed Order B. We're all down to one sentence, one
8 paragraph. You know I like those because you can either get
9 Choice A or Choice B or mostly likely, Choice C.

10 Perfectly happy to take those up.

11 All right. Ready to go to the DIP?

12 MS. REED: Yes. Your Honor, I was going to start
13 the hearing with a brief update on the business. I'm happy to
14 give that now, or I can skip ahead given the hour.

15 THE COURT: That's -- no, that's the most important
16 thing and it's the thing that I'm most interested in hearing,
17 so absolutely.

18 MS. BERKOVICH: All right. So Your Honor, the
19 Debtors have been in Chapter 11 now for a little over two
20 months and we're happy to say the company is adjusting well to
21 life in Chapter 11. The business is operating normally and
22 due to various factors, the company is ahead of budget on our
23 cash.

24 So four weeks after the initial DIP hearing -- or
25 the second interim DIP hearing, we are 26 million ahead of

1 budget. As to --

2 THE COURT: I'm sorry I interrupted you. My
3 apologies.

4 MS. BERKOVICH: That's okay. You're permitted to
5 interrupt me.

6 THE COURT: No, I'm really not.

7 Is that due primarily just to commodity change? And
8 I don't mean anything by calling it -- but I got into an
9 argument earlier this week about currency versus commodity.
10 You can obviously tell which one I think it is.

11 Is that just due to a change in the price? Is it
12 due to accelerating expense cuts? What's that driven by?

13 MS. BERKOVICH: Sure. I can answer that.

14 A small portion of it is just due to timing
15 differences, but most of it is a permanent benefit from the
16 budget and it's due to three main factors. One is the
17 increase in bitcoin prices.

18 THE COURT: Okay.

19 MS. BERKOVICH: Two is the decrease -- as compared
20 to budget.

21 THE COURT: Sure.

22 MS. BERKOVICH: Two is the decrease in power prices,
23 as compared to budget.

24 And three is miscellaneous other Debtors. So for
25 example, at the last hearing, Your Honor approved our motion

1 to sell the bit name coupon. That wasn't in our budget and we
2 actually ended up getting around \$3 million for that, which is
3 more than anticipated. So a variety of factors.

4 THE COURT: And so that's interesting. So what is
5 -- I know you're not going to know this, it's a rhetorical
6 question almost.

7 What is a 10-cent kilowatt drop do for your bottom
8 line?

9 MS. BERKOVICH: We do have -- we can get that input
10 for you. I don't have --

11 THE COURT: No, no, I'm just --

12 MS. BERKOVICH: -- that on me right now, but it's
13 significant. The power of prices in particular is a very
14 significant impact on our EBITDA and it was -- the power
15 prices were very high during much of 2022 due, among other
16 things, the war in Ukraine.

17 THE COURT: Sure.

18 MS. BERKOVICH: And those prices have come down
19 significantly in the last --

20 THE COURT: And is the Debtor just on a pure -- I'm
21 going to call it a "pure spot market" or is none of it hedge?
22 You know, supply contracts? Very little spot market?

23 MS. BERKOVICH: Most of it is spot contract.

24 THE COURT: Okay. All right. Got it. Okay.

25 MS. BERKOVICH: Okay. So in the last few weeks, the

1 Debtors' primary focus has been in finalizing the DIP credit
2 agreement and getting DIP approved today on a final basis.

3 And the last is expense. We've been focused on the
4 Equity Committee decision and litigation. We have made
5 progress on the business plan and after today, with our final
6 DIP in place, we should -- the Debtor should be able to devote
7 more attention to finalizing that and getting into
8 negotiations with our various stakeholders over a
9 reorganization plan.

10 We also continue to consider opportunist asset sales
11 of our non-core facilities.

12 THE COURT: And employee retention been what you
13 hoped it would be?

14 MS. BERKOVICH: It's been fine. You might see a
15 motion in that regard coming sometime soon.

16 THE COURT: Okay.

17 MS. BERKOVICH: But the employees have been doing an
18 excellent job on keeping the company afloat during this
19 difficult time.

20 THE COURT: And all of your interactions with
21 customers and perhaps other folks that are in similar
22 situations been working okay?

23 MS. BERKOVICH: Everything has been -- yes.

24 THE COURT: Okay.

25 MS. BERKOVICH: Everything has been going well. I

1 mean, most of our revenue was from self-mining, just the
2 machines.

3 THE COURT: Sure.

4 MS. BERKOVICH: And the bitcoin that it produces, so
5 we're -- in that sense we don't have customers, but we do have
6 a host in customers.

7 THE COURT: Got it. All right.

8 So we get to a confirmation hearing, you stand up
9 and make your presentation. I'm going to want to see a
10 bitcoin around a gold chain.

11 (Laughter.)

12 THE COURT: Just -- you know, just --

13 MS. BERKOVICH: Understood, Your Honor.

14 THE COURT: Thank you for the report.

15 MS. BERKOVICH: We'll see what we can do.

16 THE COURT: All right.

17 MS. BERKOVICH: So unless Your Honor has any
18 questions, we do get to the final hearing on the replacement
19 DIP motion. That was Docket 389.

20 So I'm pleased to announce that we've resolved all
21 creditor objections to the Final DIP Order, including the two
22 that were filed. We also worked separate from the ones that
23 were filed, we worked quite a bit with various equipment
24 lenders and purported mechanics' lienholders, on their issues,
25 and as a result, we uploaded a blackline of a Final DIP Order

1 against the Interim DIP Order at Docket 573. That was
2 uploaded -- or filed, I should say, on Sunday night. So it's
3 been more than 48 hours, and we haven't heard anything from
4 creditors arguing -- telling us that that's not appropriate.

5 So I think we're all set on that with the exception
6 of the one objection we did receive from the Equity Group.

7 THE COURT: All right.

8 MS. BERKOVICH: And that was filed at 584.

9 But before that, I did want to point out that we did
10 file the proposed Final Credit Agreement at Docket 579. Of
11 course, drawing under that credit agreement is subject to
12 entry of the Final Order. Again, we received no comments on
13 that.

14 THE COURT: Okay.

15 MS. BERKOVICH: Before I go further, I'd like to
16 move the Court to enter into evidence two of the three
17 Declarations in support of the replacement DIP that were filed
18 on January 31st. That is the Second Singh Declaration at
19 Docket No. 390. And a Blokh Declaration at Docket 391.

20 Because we resolved all issues relating to their
21 testimony, we did not have Mr. Singh and Mr. Blokh join us in
22 Houston today, but they are available virtually for
23 cross-examination.

24 And also joining us, I should say, via Zoom, is
25 Michael Bros, the Debtor's Senior Vice President of Capital

1 Markets and Acquisitions, who was our First Day Declarant.

2 THE COURT: All right. Thank you.

3 Let me ask: Any objection to the admissions of the
4 Blokh Declaration at 391, the Singh Declaration at 390?

5 (No audible response.)

6 THE COURT: No? Yes?

7 MS. REED: No, Your Honor.

8 THE COURT: All right. Thank you.

9 Then they are admitted.

10 (Declarations of Singh and Blokh at Docket 390 and 391
11 received in evidence.)

12 THE COURT: Do you wish to cross-examine either one
13 of them?

14 MS. REED: Mr. Miser is handling the DIP, so.

15 THE COURT: Oh, okay. I'm sorry.

16 MS. REED: I agreed to that, Your Honor, but that's
17 why I keep looking at him.

18 THE COURT: Ah, it's just fine.

19 Mr. Miser, do you wish to cross-examine either
20 witness?

21 MR. MISER: No, Your Honor.

22 THE COURT: All right. Thank you.

23 Then I will accept their Declarations. They are
24 excused as witnesses.

25 MS. BERKOVICH: Thank you, Your Honor.

1 Okay. So moving on to the objection, we've been
2 able to resolve a portion of it. In their objection, I would
3 point you to paragraph 9. They ask for three categories of
4 changes to the DIP Order. The first is information rights.
5 Just that additional information be provided to them.

6 The Debtors are fine with that, as are the DIP
7 Lenders and the Ad Hoc Group, so this would be the changes in
8 paragraph 19(a).

9 I can -- we can also work off of the Order, but it's
10 easier.

11 THE COURT: I want to hear -- I want to hear you get
12 through the rest of this, then we'll talk about where we go.

13 MS. BERKOVICH: Okay. The next category is 9(b) of
14 their objection, which relates to notice of the exercise of
15 remedies and a right to be heard at a remedies hearing.

16 Those changes are also acceptable to the Debtors and
17 to the DIP Lenders and the Ad Hoc Group.

18 THE COURT: Okay.

19 MS. BERKOVICH: We did want to add additional
20 language into the DIP Order that would say nothing in the
21 Final DIP Order shall be deemed to expand the scope of any
22 Official Committee appointed in these cases, or authorize
23 payments of any fees to any such Committee beyond the scope
24 and budget set forth in the Order appointing the Committee.

25 THE COURT: This is just if they want to object, I'm

1 certainly -- and I'm going to hear them whether they're an
2 Official Committee or an Ad Hoc Committee. I'm going to still
3 give them the opportunity to speak.

4 So -- and I agree. That's not pre-approval of
5 anything.

6 MS. BERKOVICH: Thank you, Your Honor.

7 So that really leaves the change requested in 9(c),
8 which is also the last change in 9(b), which relates to the
9 inclusion of the professional fees of an Equity Committee into
10 the carveout. They also want the approved budget to include
11 the Equity Committee professional fees.

12 Your Honor, the Debtors are sympathetic to these
13 requests. If an Equity Committee is appointed and would
14 consent to these, but the DIP Lenders and the pre-petition
15 secured noteholders, whose cash collateral we're using, have
16 refused these changes and they've refused to include the
17 Equity Committee professional fees in either the carveout or
18 the budget.

19 So the equity holders' response to that is the Court
20 should not approve the DIP financing. We do not agree with
21 that. The Debtors require DIP financing and the use of cash
22 collateral, and we cannot force the DIP Lenders or the
23 pre-petition secured noteholders to agree to these requests
24 from the Equity Group. So our position is that the Court
25 should overruled the limited DIP objection.

1 THE COURT: So let me ask. So the carveout is
2 actually divided into two pieces, right? A
3 pre-notice/post-notice?

4 MS. BERKOVICH: Yes, Your Honor.

5 THE COURT: All right. And Mr. Hansen, which part
6 of that are you really focused -- you can't really be focused
7 on the post-notice piece, right? It's a gross number, so that
8 wouldn't change?

9 MR. HANSEN: Your Honor, counsel for B. Riley
10 probably wants to be heard on this, as well. But since I'm
11 closer to the podium, I'll go first.

12 Your Honor, I think that the perspective that we
13 both have on this, both from the DIP Lender and from the party
14 allowing cash collateral usages, in the situation where the
15 carveout kicks in, we're talking about a post-default,
16 remedial-type situation, right? And so our view is if an
17 Equity Committee is effectively saying, "Well, we're here."
18 And if we wind up with language like you've suggested, right?
19 We're essentially saying you're proceeding at your own risk
20 here.

21 THE COURT: Right.

22 MR. HANSEN: And we're in a situation where we have
23 a DIP default and/or a cash collateral default. That's a
24 pretty tragic situation for the company, right? And so our
25 view of that is, within that window, you really are -- we're

1 not really in a solvency situation and so our view is: Why
2 are we paying out of our collateral Equity Committee fees in a
3 situation where we're seeking to exercise remedies after the
4 Debtors defaulted on our cash collateral provisions or on the
5 DIP provisions.

6 THE COURT: Are you saying it's both pieces?

7 MR. HANSEN: It is.

8 THE COURT: Great. So help me out. I got -- I
9 understand the argument with respect to the pre-notice piece.

10 MR. HANSEN: Uh-huh.

11 THE COURT: I don't understand the argument with
12 respect to the post-notice piece because you agreed to a
13 number of -- I think it was \$2 million; is that right?

14 MR. HANSEN: Yeah.

15 THE COURT: And so you've made -- you've already
16 factored that in. Why do you care who it goes to?

17 MR. HANSEN: Yeah, well, I was about to say that's a
18 fair point, Judge. I'd like to see what the Debtors' advisors
19 and the Committee's advisors have to say about that. You
20 know, that's kind of -- it's a --

21 THE COURT: I mean, no, they take on some of the
22 risk, but they're also the ones who actually consented to this
23 in the first place.

24 MR. HANSEN: That's a fair point, Your Honor.
25 That's a fair point. But I hear you that we have agreed with

1 respect to the gross number, it's a fair point that you make.
2 I think our objection rests on that point of in that type of
3 post-default remedies period, I don't think things are looking
4 pretty for the Debtor at that point.

5 THE COURT: I got that.

6 MR. HANSEN: But I understand your point about the
7 bucket and it's really a question of who shares the bucket
8 because we've already agreed to give up the bucket.

9 THE COURT: Right.

10 MR. HANSEN: Well, I guess what I would say is in
11 the miraculous situation where the Debtor and the Committee's
12 fees didn't fill up the full amount in that bucket, I still
13 have an objection because if it's the Equity Committee --
14 pretend for a second that of that 2 million, the Debtor and
15 the Official Committee are a million of it and now we have a
16 million over, for example.

17 Again, for an Equity Committee to step in and say
18 they should be able to soak up that post-period bucketed
19 amount, we still think that's unfair because you're in a
20 situation that by definition is probably an insolvency
21 situation for the Debtor.

22 THE COURT: Right. It's not the argument I thought
23 you were going to make.

24 Okay. Got it.

25 Let me hear from B. Riley. Good afternoon.

1 MR. VENTOLA: Good afternoon, Your Honor. John
2 Ventola of Choate Holt Stewart on behalf of B. Riley
3 Commercial Capital, the DIP Lender. Thank you for the
4 opportunity to be heard, Your Honor.

5 So we have a similar view and cover as a whole.
6 Conceptually we really struggle with this. There just seems
7 to be an inherent and irreconcilable conflict from the
8 proposed Equity Committee's view is that they should be
9 appointed immediately, but they are flipping all of the risk
10 of an administrative insolvency onto my client.

11 THE COURT: I'm going to slightly disagree because
12 I've told everybody where I'm going.

13 MR. VENTOLA: Yes, Your Honor.

14 THE COURT: And I would think that if we got to that
15 point, your argument gets a lot stronger. And so, let me tell
16 you where I'm headed 'cause I'm --

17 MR. VENTOLA: Okay. Thank you, Your Honor.

18 THE COURT: -- is with -- I'm going to -- it's split
19 in the Order, pre-notice/post-notice. I think that's
20 division.

21 The post-notice, I agree, and I wouldn't include
22 them in the 2 million. I just want to see if I can get
23 Mr. Hansen to bite on that.

24 (Laughter.)

25 THE COURT: Because I agree with the one statement

1 he says. At that point, the argument that you are in the
2 money at that point is really out the window. I mean, I'm
3 going to hear what Mr. Miser has to say, but I get it.

4 But with respect to the pre- -- so, well, let me,
5 let's start first. So let's assume that I approve the -- I
6 approve the Equity Committee along the lines of what I've told
7 everybody I'm really thinking hard about doing.

8 So they're going to be a part of the interim comp
9 Order, like any other professional. And so, they're going to
10 be going along and why shouldn't they -- why wouldn't you want
11 them in the budget? I mean, you have to have them in the
12 budget, again, subject to the rights that I've already told
13 everyone I'm going to reserve, because, I mean, you know, if
14 they get money, I have absolutely no doubt that Staten
15 (phonetic) can get it back.

16 That's where we got to, and I'm not suggesting
17 anything by making that comment. It's just today I'm not
18 really worried about that aspect of it, but I mean, we have to
19 have an accurate budget because that's what people are going
20 to rely on and talk about and so, I got it that you don't want
21 them to exist at all. I got that.

22 But if they do exist, then whatever their fees and
23 expenses are have to be in the budget. I mean, we just can't
24 ignore it 'cause then it's not a budget, right?

25 MR. VENTOLA: Yeah, understood, Your Honor. And of

1 course, your comments have been very instructive to me today
2 with everything you said today, so.

3 THE COURT: And thank you. I mean, I'm just trying
4 to -- again, I've told everybody what I want. I want people
5 focused on this business. I want to see if saved, if it can
6 be saved.

7 MR. VENTOLA: Correct.

8 THE COURT: And I want to know if it should be
9 saved. I mean, I'm not re-ordained to anything, but I want to
10 stop the procedure and I want to get focused on the substance
11 is what I really want.

12 MR. VENTOLA: I would just say, Your Honor, briefly,
13 we very much agree with that. I mean, my client really wants
14 to focus on the Debtors' reorganization efforts. They have
15 come in, funded new money, taken on new risks to help support
16 these reorganization efforts.

17 I would just note, Your Honor, and I have to -- if I
18 could hear the rest of the arguments, then confer with my
19 client briefly. This does effectively increase the carveout,
20 though, because if the fixed party is grown, even if they
21 don't share in it, this does -- it grows the pre- --

22 THE COURT: The pre- does, I totally got it, which
23 is really important for everybody on that interim comp Order
24 to make sure that everybody stays up-to-date, right? Because
25 that's going to be the way to minimize it. I mean, if they're

1 going to exist, they have to be in the budget, because
2 otherwise, it's not a budget.

3 MR. VENTOLA: I understand, Your Honor. So thank
4 you.

5 THE COURT: Okay. But keep walking with me for just
6 a second. So we're going to have an interim comp Order and
7 any Order is going to absolutely provide -- I mean, I know
8 everyone says -- they give lip service to it, oh, an interim
9 Order. No one is ever going to really re-evaluate it to
10 final.

11 The answer is: Yes, we are. We absolutely are.

12 And this will be one where I don't sit and wait for
13 someone to do something because no one ever does. This is one
14 that I'm going to be -- I mean, obviously I'm going to depend
15 on you, I'm going to depend on Mr. Hansen, but I'm going to be
16 looking at this, too. I want to make sure -- I mean, if I do
17 this, I mean, I got it that the Debtor is taking the path of
18 least resistance to try and get to an end result. I got that,
19 but you know, US Trustee has said no, and it's not -- you
20 know, that means something to me.

21 And again, two committees in a case is a huge
22 burden. I mean, we all know -- I mean, not that you're worth
23 it, but lawyers are expensive. And if I'm going to do this,
24 you know, I'm accepting the responsibility for trying to make
25 sure that it was right.

1 And so, and again, I'm just talking so you hear me
2 when you talk to your client about what's floating around
3 inside my head. So my view of it is, is that with respect to
4 the pre-notice part, I mean, it's in the budget. Everybody
5 should be focused on the budget 'cause we ought to live by a
6 budget. We ought to -- you know, budget shouldn't be just
7 because we have to get one. Budget should be that's how we're
8 going to measure performance of the entity, and people ought
9 to be watching the professional fees. And if something gets
10 out-of-whack, then, you know, I expect somebody to tell me.

11 I got it that it's driving up the carveout. I got
12 that, but in my mind it's not that much because it shouldn't
13 be -- I mean, it shouldn't be more than at worst 60 days of
14 Committee fees and expenses? And I don't think it ought to be
15 that much if everybody is really watching it.

16 Am I wrong in that?

17 MR. VENTOLA: I hope not, Your Honor.

18 THE COURT: I'm actually -- I'm counting on you to
19 make sure it's not.

20 MR. VENTOLA: Well, we certainly will be attentive
21 to it, Your Honor. I can assure you my client will be.

22 So thank you for the comments. I would like to
23 confer with my client, you know, given the approach the Court
24 has taken here.

25 And again, just want to reiterate, we really do want

1 to get this DIP finalized. We had very spirited discussions
2 with the Debtors' professionals, but very good faith
3 negotiating. We were very happy to get to where we were
4 today.

5 As Ms. Berkovich said, they have no creditors
6 opposed to the DIP in a case this large.

7 THE COURT: I got it. And so, I mean, we're not
8 done yet. I mean, what I want you to do, if you need to go
9 talk to your client, I got it. I'm assuming they're watching.

10 MR. VENTOLA: I believe so, yes. I know they were
11 earlier. So I hope they are.

12 THE COURT: I'm hoping will happen is that you
13 can -- that we can take another short break and you can step
14 out in the hall, and you can say, okay, we heard what Jones is
15 saying. We can either live with it, or if you can't live with
16 it, then we have a much bigger problem and you tell them not
17 to go home because none of us are going home.

18 MR. VENTOLA: Thank you, Your Honor. I will try to
19 reach them as soon as we have a break.

20 THE COURT: Okay. Mr. Hansen?

21 MR. VENTOLA: Thank you, Your Honor.

22 MR. HANSEN: Kris Hansen on behalf of the Ad Hoc
23 Secured Convert Noteholders.

24 Your Honor, I guess it's an interesting point you
25 make. I just want to point out for everybody's benefit in the

1 courtroom, the DIP budget will probably have to be adjusted
2 obviously with respect to the appointment of the Equity
3 Committee because --

4 THE COURT: Right.

5 MR. HANSEN: -- it will be, you know, a projected
6 fee, assume it's capped at 4.75 for purposes of the Order, or
7 whatever it might be. But it's an increase in the budget. So
8 I think you're right when you talk about, like, it's at
9 post-budget default period, the fee is in transit.

10 It's like -- for lack of a better way to describe
11 it, is really the issue.

12 THE COURT: Right.

13 MR. HANSEN: And you know, that Ms. Berkovich
14 pointed out before, that the Debtors are ahead on their cash.
15 You know, you asked why? Part of it obviously is because
16 they're continuing not to pay debt service.

17 THE COURT: Right.

18 MR. HANSEN: Any of their secured debt, right? So
19 cash coming in is not going back out the door to pay the
20 secured noteholders, it's not going back to pay the equipment
21 lenders or anyone else.

22 And so -- but part of that budget then, again, has
23 to adjust for the potential incurrence of these fees for the
24 Equity Committee on a regular basis. And I just wanted to
25 point out for the Court, too, that the budget does

1 demonstrate, I think two draws right now. There's a
2 \$20 million draw, and then another \$5 million draw, so in
3 theory you'd have to put in another \$5 million draw on that.
4 So just to make sure the Court understood. It's like part of
5 the status update that you understood there are continuing DIP
6 draws along the way notwithstanding the fact that the company
7 is sitting on cash.

8 THE COURT: No, I got it. And so let me ask you
9 this: I mean, if you really wanted certainty, I mean, why not
10 just lock up -- if you're \$26 million ahead, why not just lock
11 up 4.75 now because you know it can't ever be any worse than
12 that and that way, you don't have to worry about the what if?

13 MR. HANSEN: Yeah, we were going to try to do that
14 in the context of the Order that we hope to submit to you
15 together on a consensus basis.

16 THE COURT: Okay.

17 MR. HANSEN: Of course. Understood. Thank you,
18 Your Honor.

19 THE COURT: So let's do this -- and I don't know,
20 Mr. Hansen, if you need to talk to your folks, as well, but it
21 seems to me that maybe what we ought to do is take another
22 quick break -- hopefully not too long -- and again, I just
23 want to make it very clear is that, number one, the assertion
24 that it shouldn't be in a budget, that just practically
25 doesn't work, you know, whatever they are, and you know, I'm

1 perfectly happy if we come back and acknowledge, yes, we need
2 to redo -- you know, we need to do the DIP. And we need to
3 get it approved tonight, but we need to work on the budget and
4 we also need to get to Friday.

5 Perfectly happy to approve the DIP, if you're
6 comfortable with a to-be-submitted budget, perfectly happy
7 with that. I mean, you may have to make some interim -- well,
8 I don't know if you have to make interim accommodations
9 between now and Friday or not, but I'm perfectly happy if that
10 works because you want to see what happens and how all that
11 unfolds.

12 Again, I'm not trying to put you in a box -- you've
13 seen me when I've tried to put you in a box. I am not trying
14 to put you in a box tonight.

15 But if you decide that you want to just wait and see
16 that unfold, I'm more than happy, but needs to be in the
17 budget and you know, the -- and I like your term. The fee is
18 in transit. That's just fair. I got your point, although you
19 got me there in a roundabout way.

20 I got your point with respect to the post-notice and
21 again, so long as the Equity Committee knows, then they can
22 react accordingly. I got that.

23 Do you need to go talk to your folks?

24 MR. HANSEN: I was going to suggest, Your Honor,
25 it's the Debtor's -- the Debtor in the -- you know, --

1 THE COURT: Well, the Debtor needs to know that --
2 the Debtor needs to know this is done because everyone, every
3 media reporter is on the line listening and this will go out
4 all over the --

5 MR. HANSEN: Agreed.

6 THE COURT: -- things, so we're not ending the
7 hearing until we have this issue resolve. The question is?

8 MR. HANSEN: I like the -- what I was going to say,
9 Your Honor, is I like the idea of trying to sort things out
10 right now.

11 THE COURT: Yeah.

12 MR. HANSEN: And then waiting to either enter the
13 Order until Friday when we work out the rest of this, or do it
14 on a subject to the agreed-upon-budget that we all work on.

15 But that's -- I think, let's go out and talk in the
16 hallway and come back.

17 THE COURT: Oh, okay. That's perfectly fine.

18 Mr. Miser and -- I keep looking -- Ms. Reed, I'm not
19 trying to pick one over the other. I promise you. She's just
20 right here and I know her, so Mr. Miser, I apologize. Come on
21 up.

22 MR. MISER: Thank you, Your Honor. You're welcome
23 to call me Ms. Reed, too.

24 (Laughter.)

25 THE COURT: I agree with you. She's far smarter and

1 eloquent than I ever hope to be.

2 MR. MISER: And me, too, Your Honor.

3 Your Honor, you did all the work for me. Your
4 Honor, we're fine with your suggestion on the DIP carveout.

5 We agree, if that notice is triggered, there's very
6 little left for us to do.

7 Your Honor, we also obviously agree with you on the
8 budget. And ultimately our fees are subject to your court
9 allowing those fees.

10 So Your Honor, I think we're in like step with this
11 Court.

12 THE COURT: You're okay.

13 Okay. Then we just need to figure out -- we need to
14 figure out, sort of, logistics, but again, I want to make sure
15 that the Debtor has the comfort that it needs and -- because
16 there's going to be vendors who are watching this, as well,
17 who need to know that there is certainty going forward.

18 And I want to make sure that certainty gets conveyed
19 tonight. So --

20 MR. MISER: And --

21 THE COURT: -- I'm sorry.

22 MR. MISER: And Your Honor, one other point --

23 THE COURT: Sure.

24 MR. MISER: -- to the extent that it's helpful, it's
25 going to take two weeks -- maybe three weeks for the Committee

1 to be up and running -- for the US Trustee to accept
2 applications and to interview members, and et cetera.

3 So there's not change to the budget for at least the
4 next couple of weeks.

5 THE COURT: I hadn't thought about that.

6 MR. MISER: With that, Your Honor, I can sit.

7 THE COURT: No, I got -- well, let's see. What --
8 again, I want to make sure that people have ample time to talk
9 to creditor representatives. I also, again, I want the world
10 to understand that the Debtor is here. It's adequately funded
11 and is conducting business and making best possible use of the
12 process.

13 MS. BERKOVICH: Your Honor, I spoke to Counsel to
14 both the DIP Lender and the Ad Hoc Noteholder Group.

15 THE COURT: How could you possibly do that? You
16 were just -- I'm joking.

17 MS. BERKOVICH: I was thinking. We don't -- I don't
18 think we need a break. We're okay getting the Order entered
19 with the language that the Equity Group wanted -- subject --
20 as modified by what I said earlier on changing the post-notice
21 carveout amount not to include them, and we'll work in good
22 faith on the budget.

23 It's absolutely true that even if they were
24 appointed under the interim comp order, the first they would
25 even be paid if they started work tomorrow is in May and

1 there's time --

2 THE COURT: Right.

3 MS. BERKOVICH: -- for that.

4 THE COURT: So let me ask: Do you have the Order
5 here in the courtroom? And somebody with a computer?

6 MS. BERKOVICH: Yes. I have a computer, so.

7 THE COURT: So can -- if I step down -- I mean, I'm
8 happy to sit right here, but if I step down, can you-all just
9 work out the terms of the Order? If there is a problem, then
10 I'm happy to come back out -- and at which point I'm going to
11 start typing -- magic fingers.

12 But if not, you can just upload it from here and
13 once it's been uploaded, everybody can go and I'll just sign
14 it before I go home.

15 Does that work for everybody?

16 MS. BERKOVICH: Yes, Your Honor. That works.

17 THE COURT: Everybody okay with that?

18 Mr. Hansen?

19 MR. HANSEN: Yes, Your Honor.

20 THE COURT: Am I making you nervous again?

21 MR. HANSEN: No, Your Honor.

22 THE COURT: Okay.

23 MS. BERKOVICH: Before we break, Your Honor, three
24 quick points for the Record. One is because we're ahead on
25 budget, we don't plan to make those draws that Mr. Hansen

1 mentioned, right? We don't need those draws anymore and the
2 next budget would not include those draws? That's number one.

3 Number two, for every one cent decrease in the price
4 of power per kilowatt hour, that is an extra \$15 million of
5 cost --

6 THE COURT: Really?

7 MS. BERKOVICH: -- savings for the Debtors, which
8 directly translates into \$50 million in additional EBITDA.

9 So the business is very sensitive to price changes.

10 THE COURT: So one percent drop on an annualized
11 basis, is that where that's coming from?

12 MS. BERKOVICH: One cent -- one cent.

13 THE COURT: Right, on an annualized basis, right?

14 MS. BERKOVICH: On an annualized --

15 THE COURT: So it's not like it had dropped one
16 penny for a day you make that money, right?

17 MS. BERKOVICH: Correct, correct. Over a year, yes.
18 One cent --

19 THE COURT: On an annualized basis.

20 MS. BERKOVICH: -- but an annualized --

21 THE COURT: I was going to get in business then if
22 that were the case.

23 (Laughter.)

24 MS. BERKOVICH: And then the other point is our
25 power is a combination of the spot market, the tariff market,

1 and we do have one power agreement. So I did want to clarify
2 the Record on that point.

3 THE COURT: I was just surprised if they were all
4 just day -- day purchase, I was going to be shocked.

5 Well, okay, I got it.

6 MS. BERKOVICH: We will take the time to fix the
7 Order. I don't think it will take a lot of time. The
8 directions were pretty clear.

9 THE COURT: I got it. All right. Then I'm going to
10 let you-all do what you do so well. I appreciate you working
11 through the issues.

12 Again, I'm happy to come back out, but if everybody
13 signs off on it, you know, upload it. I'd ask you to either
14 send Mr. Alonzo a text or buzz on the door, and you know,
15 we'll get it done before we go home, okay?

16 MS. BERKOVICH: Thank you, Your Honor.

17 I mean, the milestone expires tomorrow, so if it's
18 going to take more than just a few minutes, we will let the
19 courtroom know so that people don't leave.

20 THE COURT: Yeah, nobody can go until it's uploaded.
21 How about that?

22 MS. BERKOVICH: Oh, okay. I like that.

23 THE COURT: Okay. All right. All right.

24 MS. BERKOVICH: I got that.

25 THE COURT: All right.

1 MS. BERKOVICH: Thank you, Your Honor.

2 THE COURT: With that, everyone, safe travels home.

3 We'll be adjourned.

4 THE CLERK: All rise.

5 (Proceedings concluded at 5:13 p.m.)

6 * * * * *

7 *I certify that the foregoing is a correct transcript*
8 *to the best of my ability produced from the electronic sound*
9 *recording of the proceedings in the above-entitled matter.*

10 /S./ MARY D. HENRY

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